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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/807,581	03/23/2004	Steven S. Kim	82,795	4120

7590 06/23/2006

Office of Counsel Code OC4  
Naval Surface Warfare Center  
Indian Head Division  
101 Strauss Ave., Bldg. D-31  
Indian Head, MD 20640-5035

EXAMINER
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CLEMENT, MICHELLE RENEE

ART UNIT	PAPER NUMBER
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3641

DATE MAILED: 06/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/807,581	<b>Applicant(s)</b> KIM ET AL.	
	<b>Examiner</b> Michelle (Shelley) Clement	<b>Art Unit</b> 3641	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 21 April 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 18-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 March 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Claims 18-20 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim.

Applicant timely traversed the restriction (election) requirement in the reply filed on 4/21/06.

1. Applicant's election with traverse of Invention I in the reply filed on 4/21/06 is acknowledged. The traversal is on the ground(s) that the subject matter is related and that a search for the one group of claims would overlap a search for the remaining claims. This is not found persuasive because inventions are distinct because (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product. See MPEP § 806.05(h). In the instant case the product as claimed can be used in a materially different process of using the product such as in the process of attaching rocket components.

2. Because these inventions are independent or distinct for the reasons given above and have acquired a separate status in the art in view of their different classification (merely being in the same class does not indicate that the inventions are related in that they have different classifications by sub-class, a search of one invention would not require the same search as the other invention), restriction for examination purposes as indicated is proper. Applicant has not pointed out the supposed error of the restriction requirement but is merely arguing that the inventions should be examined together. The requirement is still deemed proper and is therefore made FINAL.

***Drawings***

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the rocket warhead section connectable end comprising threads must be shown or the feature(s) canceled from the claim(s). The adapters between the multiple submunitions appear to be boxes, the details are not shown how the adapter connects the submunitions. No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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5. Claim 12 contains the trademark/trade name Teflon®. Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second paragraph. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product. A trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name. In the present case, the trademark/trade name is used to identify/describe a material and, accordingly, the identification/description is indefinite.

6. Claim 15 contains the term “MK 66 Rocket”. The term “MK 66 Rocket” is a term assigned by the manufacturer. As such, it is dependent upon the manufacturer to define this term. Since the manufacturer has authority to modify the structure, any connection a claim may have to these structures may have varying scope over time, if the structures change, the disclosure may no longer support these limitations and thus the claim scope is uncertain.

### ***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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8. Claims 1, 2, 6-10, and 14-17 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Kim et al. (US Patent # 6,338,242). Kim et al. discloses an ordnance venting system to reduce the danger of explosion from heat induced over pressurization in rocket warheads comprising a first rocket section comprising a warhead section having a first connectable end and an adapter that melts at high temperatures having a first mating surface and a second mating surface, the first mating surface of the adapter effective to rigidly connect to the first connectable end of the rocket warhead section and the second mating surface of the adapter effective to rigidly connect with a connectable end of a second rocket section wherein the adapter binds the first rocket section and second rocket section. The adapter comprises a thermoplastic polycarbonate material filled with glass in an amount of from about 30 weight percent or more or ranging from about 30 weight percent to about 40 weight percent. The rocket comprises a MK 66 Rocket and the adapter melts at a temperature of from about 350 degrees F or greater. Although Kim et al. does not expressly disclose that the adapter structurally fails at the claimed pressure of from about 5000 psi or greater, Kim et al. discloses the same adapter made of the same materials, therefore it is inherent that the adapter would fail at the same pressure as the claimed adapter.

9. Claims 1 and 4 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Wong et al. (US Patent # 7,025,000). Wong et al. discloses an ordnance venting system to reduce the danger of explosion from heat induced over pressurization in rocket warheads comprising a first rocket section comprising a warhead section having a first connectable end and an adapter that melts at high temperatures having a first mating surface and a second mating surface, the first mating surface of the adapter effective to rigidly connect to the first connectable end of the

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rocket warhead section and the second mating surface of the adapter effective to rigidly connect with a connectable end of a second rocket section wherein the adapter binds the first rocket section and second rocket section. Wherein the second rocket section comprises a rocket fuze section.

***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 3, 5 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kim et al. as applied to claim 1 above. Kim et al. discloses the claimed invention except for the rocket warhead section comprising a second connectable end and a second adapter or multiple connectable ends (i.e. multiple submunitions). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have multiple adapters, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

12. Claims 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kim et al. as applied to claim 1 above. Kim et al. discloses the claimed invention except for the embodiment of the adapter comprising a nylon material or a Teflon® material. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use any known equivalent material, since it has been held to be within the general skill of a worker in the

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art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.


***Conclusion***

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Roach (US Patent # 6,752,085), English et al. (US Patent # 5,044,154), Smith (US Patent # 4,956,971), and Hickey (US Patent # 4,557,198).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michelle (Shelley) Clement whose telephone number is 571.272.6884. The examiner can normally be reached on Monday thru Thursday 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone can be reached on 571.272.6873. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
MICHELLE CLEMENT  
PRIMARY EXAMINER